

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

YOURGOS DIAMANTOPOULOS,	)	4:09CV3173
	)	
Plaintiff,	)	
	)	
V.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
FRED BRITTON, et al.,	)	
	)	
Defendants.	)	

This matter is before the court on its own motion. On September 3, 2009, the court required Plaintiff to show cause why he is entitled to proceed in forma pauperis (“IFP”) pursuant to the provisions of [28 U.S.C. §1915\(g\)](#) (“§ 1915(g)”). (Filing No. [13](#).) Plaintiff filed a Response to the court’s Memorandum and Order. (Filing No. [14](#).) The court has carefully reviewed Plaintiff’s Response and finds that this matter should be dismissed.

***I. BACKGROUND***

On August 13, 2009, while incarcerated, Plaintiff filed a Complaint (filing no. [1](#)) and later filed a Motion for Leave to Proceed IFP (filing no. [7](#)). On September 3, 2009, the court ordered Plaintiff to either show cause why he is entitled to proceed IFP or pay the full \$350 filing fee by October 2, 2009, or his case would be dismissed. (Filing No. [13](#).) The court’s Memorandum and Order was based on the provisions set forth in [§ 1915\(g\)](#), and also the court’s finding that Plaintiff brought the following three cases while incarcerated, all of which were dismissed for failure to state a claim upon which relief may be granted:

- *Rehbein v. Nelson, et al.*,<sup>1</sup> No. 4:95CV3157 (D. Neb.), dismissed on August 18, 1995. (Case No. 4:95CV3157, Filing Nos. 13 and 14 (see [Docket Sheet](#)).)
- *Diamantopoulos v. Director of Corrections, et al.*, No. 4:05CV3097 (D. Neb.), dismissed on May 13, 2005. (Case No. 4:05CV3097, Filing Nos. [9](#) and [10](#).)
- *Diamantopoulos v. State of Nebraska, et al.*, No. 8:07CV31 (D. Neb.), dismissed on October 14, 2008. (Case No. 8:07CV31, Filing Nos. [95](#) and [96](#).)

On September 10, 2009, Plaintiff filed a Response to the court's Memorandum and Order in which he generally objected to the August 11, 2009, Memorandum and Order and argued the merits of the three previously-dismissed cases and other matters relating to the validity of his conviction. (Filing No. [14](#).)

## II. ANALYSIS

A prisoner may not bring a civil action or proceed IFP if the prisoner has, on three or more occasions, while incarcerated, brought an action or appeal in federal court that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted. [§ 1915\(g\)](#). An exception is made for prisoners who are under imminent danger of serious physical injury. *Id.*

In its previous Memorandum and Order, the court ordered Plaintiff to show cause why his case should not be dismissed pursuant to [§ 1915\(g\)](#). (Filing No. [13](#).) The court listed three cases brought by Plaintiff that were dismissed because they failed to state a claim upon which relief may be granted. (*Id.* at CM/ECF p. 1.) For

---

<sup>1</sup>Yourgos Diamantopoulos is also known as Cary Nelson Rehbein. See Nebraska Department of Correctional Services, Inmate Locator, at <http://dcs-inmatesearch.ne.gov/Corrections/InmateDisplayServlet?DcsId=35084> (last visited Sept. 2, 2009).

Plaintiff to proceed IFP, he needed to show the court that any or all of the three dismissed cases do not meet the criteria set forth in [§ 1915\(g\)](#) or, alternatively, that he faces imminent danger of serious physical injury.

In his Response, Plaintiff did not deny that, while incarcerated, he filed three cases that were dismissed because they failed to state a claim upon which relief may be granted. He also did not allege that he faces any danger of physical injury. Instead, he argued the merits of the previously-dismissed cases and other matters relating to previous habeas corpus petitions and the validity of his conviction. (Filing No. [13](#).) In light of this, Plaintiff has not shown that he is entitled to proceed IFP, nor has he paid the full \$350 filing fee. For these reasons, this matter must be dismissed.

IT IS THEREFORE ORDERED that:

1. This matter is dismissed without prejudice. All pending motions are denied as moot.
2. A separate judgment will be entered in accordance with this Memorandum and Order.

October 16, 2009.

BY THE COURT:

*Richard G. Kopf*

United States District Judge

---

\*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.